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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

GLEN R. HAGEN, Plaintiff, vs. NCR CORPORATION, and DOES 1 through 100, Defendant.	Case No. 07 CV-2205 DMS (CAB) **OPPOSITION TO PLAINTIFF'S EX PARTE APPLICATION TO CONTINUE EXPERT DESIGNATION AND RELATED DATES** **[FRCP 26(a)(2)(C)]**

Defendant NCR Corp. hereby opposes Plaintiff Glen Hagen's ex parte application to continue expert designation and related dates on the grounds of undue delay and prejudice to Defendant.

A. Plaintiff's Own Delay Should Not Be Excused.

The date to designate expert witnesses was June 17, 2008. Plaintiff informs the Court that his counsel attempted to obtain a stipulation to extend the date, but it must be stressed that the request was not made until after the deadline had already passed. Until this time, Plaintiff's counsel did not mention any difficulties regarding any potential expert designation at any time following the Case Management Conference Order dated March 19.

Further, Plaintiff mentions the fact that a guardian was not appointed for him until May 5. This delay can only be attributed to Plaintiff and factors solely within his control. The Court is reminded that the issue of appointing Plaintiff's wife as his guardian was discussed at the February 13 Case Management Conference and the Court agreed and encouraged the expedient appointment of a guardian. Plaintiff's ex parte application fails to explain why nearly three months passed before the guardian was appointed.

Finally on the issue of Plaintiff's delay, there is no explanation why the mere location or identification of an appropriate expert could not have been performed by Plaintiff's counsel months or even years earlier. As a point of fact however, based on counsel's affidavit, Plaintiff's case for disability discrimination was filed without prior consultation with an expert who was willing to provide an opinion that Plaintiff was capable of working despite his dementia/Alzheimer's Disease.

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B. Defendant Has Been Prejudiced.

Plaintiff has been treating with a neuropsychologist, Lisa Davidson M.D. since 2006. Dr. Davidson made a demand to be present at Plaintiff's deposition to monitor his behavior and ability to participate in the deposition process. During the communications regarding the appropriateness and logistics of Dr. Davidson's demand, Plaintiff's counsel never raised the issue of an additional expert in the neurology field.

In fact, Plaintiff has disclosed four treating doctors in total during discovery, three of whom have expertise in the field of neurology. There have been no discussions regarding the addition of some other "hired gun" expert. Plaintiff's belated attempt to add some fifth "expert" doctor (who would somehow be able to add anything to what the previously identified treating doctors could testify to) is just pure overkill intended to prejudice Defendant and add undue cost and preparation time.

Furthermore, Dr. Davidson was deposed on June 10 when there was no mention of some expert witness and she was deposed with the understanding that there would be no expert witness. Defendant's trial and discovery strategy has been affected by this issue and Defendant would be prejudiced if some additional doctor is added to the current parade of doctors.

CONCLUSION

Defendant respectfully requests that Plaintiff's ex parte request to continue expert designation and related dates be denied on grounds of undue delay and prejudice to Defendant.

Dated: July 11, 2008

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